FREQUENTLY ASKED QUESTIONS AND ANSWERS REGARDING THE 2015 ADULT SENTENCING & RELEASE GUIDELINES:

Q. It appears criminal history scores will be reduced under the new calculations. Why?
A. *In theory, the presenting offense is as important as the criminal history of an offender. Form 1 represents the weight given to these two variables in determining whether a prison commitment is warranted. Form 1 of the 2014 Utah Guidelines weights criminal history more heavily than any other primary grid nationwide. 28% of all cells on Form 1 of the 2014 Guidelines with prison recommendations would not be recommended for prison but for the criminal history score. By comparison, the U.S. Sentencing Guidelines are the lowest nationwide at 8%. The weight of criminal history scoring in the Guidelines is fundamentally a policy choice and one which appears to have been inflated above the presenting offense.*

Q. If Utah's prison commitment rate is already one of the lowest in the nation, why do we need to reduce the number committed to prison?
A. *The Justice Reinvestment Initiative's objective was to focus prison beds on serious and violent offenders; strengthen probation and parole supervision; improve and expand re-entry and treatment services; support local corrections systems; and ensure oversight and accountability. In addition, while Utah's per capital prison rate was the 7th lowest in the nation (at 252) as of 2005, Utah's black/white incarceration rate was actually the 8th highest in the nation, with a ratio of 11.2 black offenders for each white offender. Criminal history enhancements are strongly correlated in other guideline jurisdictions with disproportionate minority impact. To the extent that reducing criminal history enhancements reduces disproportionate minority impact, the Sentencing Commission seeks to utilize the most objective, racially neutral method of assessing criminal history.*

Q. Does it mean if the Guidelines don't recommend prison that a judge cannot impose it?
A. *No. AP&P's recommendations should be consistent with the Guidelines, which remain advisory in nature. The Guidelines do not limit a prosecutor or a defense attorney from arguing the merits of their case, nor do they limit judicial discretion in an individual case.*

Q. If the Guidelines aren't mandatory, how will they have any impact?
A. *Subsequent to several Supreme Court decisions (Blakely v. Washington 542 U.S. 296 (2004) and United States v. Booker, 543 U.S. 220 (2005)), all Sentencing Guidelines nationwide are now advisory in nature. Utah's Sentencing Guidelines have always been advisory in nature and yet both the Judiciary and the Board of Pardons and Parole have historically given substantial deference to the Utah Sentencing & Release Guidelines. The Sentencing Commission, in coordination with CCJJ, will continue to track the actual application of the Guidelines annually and to report upon their use by the Judiciary and the Board of Pardons and Parole in order to determine whether further Guideline and/or statutory revisions are warranted.*

Q. Criminal history score and the presenting offense are the two factors in the grids on Forms 1-5a. Why isn't the presenting offense included as a factor in Forms 6-10?
A. *Risk Management and Risk Reduction are separate and independent assessments. Forms 1 – 5a are the forms which should be used to impose a proportionate punishment; to incapacitate for the limited period of confinement; and to hold offenders accountable. Forms 6-10 are a structured decision-making approach to supervision utilizing validated tools and incorporating decades of research for the purpose of long term behavior modification. It is possible for an offender to have committed a very serious offense and still score as low risk to reoffend. Conversely, it is possible for an offender to have committed a more minor offense and yet score as high risk to reoffend.*

Q. Does that mean that criminal history is being double-counted because it is considered in both Risk Management Forms (Forms 1-5a) and Risk Reduction Forms (Forms 6-10)?
A. *No, criminal history is relevant to both, but the purposes of the Risk Management Forms are separate from and independent of the Risk Reduction Forms. It is possible for an offender to have committed a very serious offense and still score as low risk to reoffend. Conversely, it is possible for an offender to have committed a more minor offense and yet score as high risk to reoffend.*

Q: Why aren't Class B's counted in the criminal history scoring on Forms 1-5a?
A: *It was an intentional policy decision to include only Class A's and above and misdemeanor person crimes in the criminal history scoring on Forms 1-5a.*

Q: Why does the Supervision History category not reflect multiple instances of supervision?

A: *Supervision Risk and Supervision History scoring under the 2014 Guidelines included technical violations which are not subject to the same degree of proof as actual criminal conduct. An offender initially sentenced to prison on a more serious offense would have scored lower than an offender placed on probation with multiple technical violations. The recommendations developed by CCJJ were an intentional policy decision to incentive compliance with all forms of probation ordered by the Court and to only subject offenders to a higher degree of punishment where they have either had a revocation or an offense while on supervision.*

Q: Why did the Sentencing Commission revise the CCJJ recommendation from "violent" crimes to "person" crimes?

A. *The Utah Guidelines have not typically referred to "violent" crimes, but have instead used the term "person" crimes, which were already delineated in Addendum B.*

Q. It appears from the instructions that Class B or C misdemeanor "person" crimes can be counted in the criminal history scoring on Forms 1-5a; however there are a few crimes that appear to be missing. Is Addendum B an exclusive list of all person crimes, both felony and misdemeanor?

A. *The instructions on page 14 state that "Person Crime Convictions" include convictions for any offense listed in Utah Code Annotated 76-3-203.5(c), as well as those designated as person crimes in Addendum B. The instructions further state that "Person Crime Convictions" may include misdemeanor offenses not counted in other sections of the criminal history scoring. See Addendum B. The Sentencing Commission inadvertently failed to list a number of additional person crimes which will be added to Addendum B:*

• 41-6A-1716(4)(B)(I)	CAUSE INJURY WHILE USING HH DEV.	MB
• 76-5-102	ASSAULT	MB
• 76-5-102.3	ASSAULT AGAINST SCHOOL EMPLOYEES	MA
• 76-5-102.7	ASSAULT AGAINST HEALTH CARE WORKER	MA
• 76-5-102.0	PROPELLING BODILY SUBSTANCE	MB
• 76-5-112	RECKLESS ENDANGERMENT	MA
• 76-5-304	UNLAWFUL DETENTION	MB
• 76-5-401	UNLAWFUL SEXUAL ACTVITY WITH A MINOR	MB
• 76-5-401.1	SEXUAL ABUSE OF A MINOR	MA
• 76-5-401.2	UNLAWFUL SEXUAL CONDUCT WITH 16,17 Y.O.	MA
• 76-5-412	CUSTODIAL SEXUAL RELATIONS	MA
• 76-5-413	CUSTODIAL SEXUAL RELATIONS YOUTH R.C.	MA
• 76-9-702.1	SEXUAL BATTERY	MA
• 76-10-506	DANGEROUS WEAPON IN FIGHT OR QUARREL	MA
• 76-10-508.1	FELONY DISCHARGE OF FIREARM	F3
• 76-10-1313 (4)	SEXUAL SOLICITATION OF A CHILD	F3

Q. What degree of injury is required to assess points in the person crime category for "with" or "without injury"?

A. *The Sentencing Commission has not defined a specific degree of injury required at this time. The Pre-Sentence Report should contain a recommendation as to whether an injury was inflicted and substantiation that the assessment of points in this category is accurate. Ultimately, "the sentencing judge is required to consider the party's objections to the report, make findings on the record as to whether the information objected to is accurate, and determine on the record whether that information is relevant to the issue of sentencing." See, Waterfield 2014 UT App 67, ¶ 30 and Sandridge 2015 UT App 297 ¶ 6.*

Q. Why is "secure care" no longer counted in the juvenile history section?

A. *After an extensive review of the disposition history of juveniles who were committed to secure care, the average number of prior dispositions was approximately 2. Including secure care as the highest level of points within this category is not an accurate reflection of the graduated points assessed in this category.*

Q. Why are juvenile adjudications limited to the past 10 years?

A. *Juvenile adjudications in juvenile court are not criminal convictions. The purpose of the Juvenile Court is different than District Court. The Constitutional protections afforded in District Court to defendants, such as the right to counsel and trial by jury, are not as routinely afforded to a juvenile offender in juvenile proceedings. In addition, at least 9 other states have already adopted similar policies which are commonly referred to as a "gap" or "decay" policy. The most common length of time for such policy is ten years and is based upon research that an offender, who stays crime free for a period of 7-10 years, has a risk to reoffend close to that of a person without any criminal record.*

Q. Why do the e-forms contain three drop down menus on the Supervision History scoring which look different than the hard copy version?
A. *The drop down menus were added in order to simplify the method by which this section is scored. There was initial confusion due to the unique scoring nature of this category. The actual calculation should be the same regardless of whether the e-form or the hard form is utilized. The e-form simply provides a more methodical approach for ease of scoring in this category consistent with the recommendations of CCJJ and the intent of HB348.*

Q. Department of Corrections, Adult Probation & Parole, is not providing Pre-Sentence Reports for offenders who score as low risk to re-offend. Isn't this elevating the Risk Reduction goal of sentencing above Risk Management and Restitution?
A. *The Department of Corrections maintains authority to determine how their limited resources are utilized. Ideally, a Pre-Sentence Report addressing all three goals of sentencing (even in an abbreviated format) would be preferable.*

Q. What assurance is there that the LSI-SV will be scored correctly?
A. *If unfamiliar with the LSI-SV itself, please contact the JRI Implementation Coordinator at CCJJ, Doreen Weyland, at dweyland@utah.gov. If uncertain as to the fidelity of the use of the tool in an individual case, please contact the scorer directly. The Regional Administrators of Adult Probation & Parole within the Department of Corrections are also available to respond to questions on individual cases in their regions.*

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Q. The 1-3 day sanctions are not long enough to deter further violations or to ensure compliance. Why aren't the sanctions more severe?
A. *A consistently delivered proportionate response is a more effective deterrent than a severe threat which is not actually enforced. The 1-3 day sanctions (5 in every 30 days) are part of the graduated sanctions and incentives which function together for behavior modification purposes.*

Q. Why not use more intensive supervision services?
A. *Not a single reviewer of studies of the effects of official punishment alone (custody, mandatory arrests, increased surveillance, etc.) has found consistent evidence of reduced recidivism (increased by 7%). However, approximately half of the studies of correctional treatment services reported reduced recidivism rates relative to various comparison conditions, in every published review (reduced recidivism by 15%). However, utilizing an appropriate level of both supervision and treatment with fidelity, as detailed in Form 6, can reduce recidivism by more than 30%.*

Q. Why not use "zero tolerance" conditions of probation?
A. *For behavior modification purposes, a consistently delivered proportionate response is a more effective deterrent than a severe threat which is not actually enforced. Addendum G in coordination with Form 7 and 10 (all of which are incorporated into the Response & Incentive Matrix) still provides a mechanism to address public safety violations to the court or Board for appropriate action.*

Q. Why 30, 60, 90 days on probation revocation caps?
A. *As of 2013, the statewide average time spent in county jails prior to revocation to prison was approximately 5 months. The total of 30, 60 and 90 days is approximately 6 months. The time periods are intentionally broken into three separate events for behavior modification purposes.*

Q. Why not use 6 months jail time as a detoxification period for drug offenders?
A. *Detoxification in county jails is not recommended by research or practitioners with extensive experience in substance abuse disorders. The National Association of Drug Court Professionals recommends no more than 3-5 days jail as a sanction for those most severely addicted. In part, this recommendation is based upon the potential for overdose upon release, which increases with the length of confinement. As of 2014, Utah's rate of overdose death was 8th nationwide.*